

DOCKET FILE COPY ORIGINAL

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the matter of)
)
JAMES A. KAY, JR.)
)
Licensee of One Hundred Fifty Two Part 90)
Licenses in the Los Angeles, California Area)

WT Docket No. 94-147

TO: The Commission

MOTION TO STRIKE

JAMES A. KAY, JR. ("Kay"), by his attorneys, moves to strike the "Wireless Telecommunications Bureau's Exceptions and Brief" filed on October 12, 1999 ("Brief"). In support, the following is respectfully submitted.

The Wireless Bureau ("Bureau") submitted its Brief pursuant to Section 1.276 of the Commission's rules. However, the Brief does not follow the requirements of Section 1.276(a)(2) of the Commission's rules. Specifically, that section of the rule states as follows:

"Exceptions shall be consolidated with argument in a supporting brief and shall not be submitted separately. As used in this subpart, the term 'exceptions' means the document consolidating the exceptions and supporting brief. The brief shall contain (i) a table of contents, (ii) a table of citations, (iii) a concise statement of the case, (iv) a statement of the questions of law presented, and (v) the argument, presenting clearly the points of fact and law relied upon in support of the position taken on each question, with specific references to the record and all legal and other materials relied on."

The Bureau's Brief does not present a statement of the questions of law presented. See attached Declarations of Messrs. Peltzman, Shainis and Keller. Furthermore, the Bureau does not request a waiver of Section 1.276(a)(2).

In addition, the Bureau's Exceptions are violative of Section 1.277(c) of the Commission's rules. Specifically, that Section states, in pertinent part, as follows:

“Except by special permission, the consolidated brief and exception will not be accepted if the exception and argument exceed 25 double-spaced typewritten pages in length. (The table of contents and table of citations are not counted in the 25-page limit; however, all other contents to and attachments to the brief are counted (emphasis supplied).”

The Bureau’s exceptions including the attachments amount to thirty-five (35) pages.¹

The Bureau on September 29, 1999, filed a “Motion for Extension of Page Limitation.” By Order, FCC 99I-19, released October 7, 1999, the Bureau was granted permission to file a brief not to exceed thirty (30) pages.² The Bureau has flagrantly defied the Commission’s Order. It is ironic that the Bureau, which expects licensees to adhere strictly to the Commission’s rules, even when those rules and regulations are incredibly complex, is unable to adhere to the most straightforward rule. Moreover, the Bureau’s failure to adhere to the Commission’s Order on the page limitation is particularly unsettling. The Bureau’s conduct is under the most favorable light at best termed impudent.

In view of the foregoing, the Bureau’s Exceptions and Brief should be stricken.

Respectfully Submitted,

James A. Kay, Jr.

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November 2, 1999

¹ Text: 29 pages, attachments: 6 pages.

² Kay was also permitted to file a reply not to exceed thirty (30) pages.

ATTORNEY'S DECLARATION

AARON P. SHAINIS, states under penalty perjury the following:

I have reviewed the Wireless Telecommunications Bureau's Exceptions and Brief in WT Docket No. 94-147 which was filed on October 12, 1999. The submission does not contain a statement of the questions of law presented.

November 2, 1999


AARON P. SHAINIS

ATTORNEY'S DECLARATION

ROBERT J. KELLER, states under penalty perjury the following:

I have reviewed the Wireless Telecommunications Bureau's Exceptions and Brief in WT Docket No. 94-147 which was filed on October 12, 1999. The submission does not contain a statement of the questions of law presented.

November 2, 1999

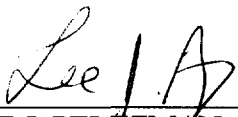
ROBERT J. KELLER

ATTORNEY'S DECLARATION

LEE J. PELTZMAN, states under penalty perjury the following:

I have reviewed the Wireless Telecommunications Bureau's Exceptions and Brief in WT Docket No. 94-147 which was filed on October 12, 1999. The submission does not contain a statement of the questions of law presented.

November 2, 1999



LEE J. PELTZMAN

CERTIFICATE OF SERVICE

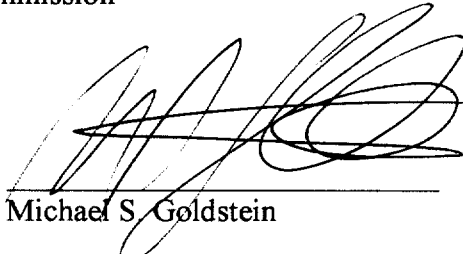
I hereby certify that I, Michael S. Goldstein, secretary at the law firm of Shainis & Peltzman, Chartered, this 2nd day of November, 1999, had hand-delivered a copy of the foregoing pleading to the following:

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